IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4316 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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LOKMANGAL POST BASIC HIGH SCHOOL

Versus

GUJARAT SECONDARY EDUCATION BOARD

Appearance:

1. Special Civil Application No. 4316 of 2002

MR BHARAT T RAO for Petitioner No. 1

MR AD OZA with MR DIPAK DAVE for Respondent No. 1

MR KP RAVAL, AGP, for Respondents Nos. 2-3

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 23/04/2002

ORAL JUDGEMENT

In pursuance of an advance copy of the petition given by the petitioner, learned advocate Shri Arun Oza with learned advocate Shri Dipak Dave has appeared for

respondent No. 1 Board and learned AGP Shri K.P. Raval has appeared for respondents Nos. 2 and 3.

2. It has been prayed in this petition that students studying in the petitioner school be permitted to appear at Std. XII examination, which is normally conducted by respondent No. 1 Board.

3. Learned advocate Shri Rao appearing for the petitioner has submitted that this petition has been filed with a prayer that the students, whose names have been stated in Annexure A, be permitted to appear at Std. XII examination conducted by respondent No. 1 Board. It has been submitted by him that the said students had studied in General Stream while undergoing studies in Std. XI and even in Std. XII they studied in General Stream. In the circumstances, the said students ought to have been permitted to appear in General Stream examination in Std. XII.

4. In pursuance of notice issued by this court, an affidavit-in-reply has been field by Shri Balkrishna, on behalf of respondent No. 1 Board.

5. I have heard the learned advocates and looking to the facts of the case, in my opinion, this petition cannot be entertained and the prayer made in the petition cannot be granted for the following reasons.

6. Upon perusal of the pleadings and the documents placed on record by the learned advocates, it is very clear that the students, for whose benefit this petition has been filed, had studied in Post Basic Stream, when they were prosecuting their studies in Std. XI. While prosecuting the studies in Std. XII, they changed the stream and they studied in General Stream. Now, the students desire to appear at Std. XII examination in General Stream.

7. The applications submitted by the students had been rejected by respondent No. 1 Board on the ground that the said students had not studied in General Stream for 2 years and, therefore, they could not be permitted to appear at Std. XII examination. The said reply was given by respondent No. 1 Board on 18.2.2002. Intimation given to the petitioner by respondent No. 1 Board is at Annexure I to the affidavit-in-reply filed by the Board. The Board was again requested by the petitioner to permit the students to appear at the examination. The said request was reconsidered by the respondent Board and again, by letter dated 7.3.2002, the

petitioner was informed that it was not possible to permit the students to appear at the examination in question. It was also intimated to the petitioner school that if the petitioner wanted to make any representation, the petitioner should make a representation before 11.3.2002. It appears that no representation was made by the petitioner before the Board and for the first time thereafter this petition has been filed.

8. It is pertinent to note that substantial delay has been caused in filing the petition because, the communication dated 7.3.2002 (Annexure II to the affidavit-in-reply) was sent to the petitioner on or about 7.3.2002. It is not in dispute that in spite of an intiamtion given to the petitioner, the petitioner did not make any representation and the petitioner did not adduce any evidence before the Board to show that the students of the school had not changed their stream but had studied only in General Stream. Had the case put forward by the petitioner before this court been correct, the petitioner would have adduced relevant evidence before the Board in pursuance of the intimation given to the school by the Board under its letter dated 7.3.2002.

9. It is also pertinent to note that the school is in Meghraj Taluka of Sabarkantha District. Examination for Std. XII students had commenced in Meghraj Taluka on 18.3.2002. It is not in dispute that the examination is over. It has been submitted by learned advocate Shri Rao that in the interest of the students, the examination should be held again for the students who were imparted education in the petitioner school. In my opinion, this prayer is not reasonable and it cannot be granted. The respondent Board cannot be constrained to conduct examination again for the students of the petitioner school as a special case. Thus, it is also very clear that the petition has been filed at a belated stage.

10. It has been submitted by learned advocate Shri Rao appearing for the petitioner that in fact the students had studied in General Stream in Std. XI. The said statement does not appear to be correct for the reason that the respondent Board has placed on record the examination forms filled up by the students which were forwarded through the petitioner school. Upon perusal of the said examination forms, it is very clear that all the concerned students had studied in Post Basic Stream while undergoing their studies in Std. XI. This documentary record must be believed as examination forms have been duly signed by the concerned students as well as the principal of the school.

11. It is also pertinent to note that the petitioner school had forwarded 76 examination forms to the Board. Out of the said forms, 12 forms were accepted and 12 students were permitted to appear at the examination in question. In fact, 12 students have also appeared at the examination as the said students had studied in General Stream in Std. XI as stated in their forms. Learned advocate Shri Rao's statement that a mistake was committed by the principal and the school authorities while filling up the forms cannot be believed because such a mistake can never be made. Had there been a mistake, the mistake would have been committed in all the forms. Moreover, if a school is not imparting education in Post Basic stream, the school authorities or the principal would have never written that the students were taught in Post Basic Stream. Thus, the submission made by learned advocate Shri Rao with regard to mistake committed by the principal as well as the students cannot be believed.

12. It has been submitted by learned advocate Shri Rao appearing for the petitioner that under letter dated 17.3.2002 the Jt. Director of Education has addressed a letter to the respondent Board requesting the Board to permit certain students, who had undergone studies in General Stream, to appear at Std. XII examination. Upon perusal of the said letter, it is clear that said letter would apply only to those students, who had undergone studies in General Stream. As stated hereinabove, upon perusal of the examination forms, it is very clear that the students had not studied in General Stream and had studied in Post Basic Stream and, therefore, in my opinion, the instruction given by the Government authorities to the Board would not help the concerned students.

13. Learned advocate Shri Rao has also submitted that the District Education Officer had inspected the premises of the school and had come to the conclusion that the students were taught subjects of General Stream during the relevant period. It is true that one of the letters of the District Education Officer mentions that the students of the school were taught subjects of General Stream when they were studying in Std. XI. It is also true that the subsequent letter written by the same DEO, upon further scrutiny, states that the school had taught subjects of Post Basic Stream to the concerned students when they were undergoing studies in Std. XI. Looking to the contents of the second letter written by the DEO and more particularly when the students and the school have specifically stated in the examination forms that

the students had studied in Post Basic Stream, there is no reason to believe that the contents of the first letter written by the DEO are correct.

14. Learned advocate Shri Dipak Dave appearing for the Board has submitted that the petitioner school was never given any recognition at the relevant time for teaching subjects of General Stream to the students. In the circumstances, the petitioner school could not have taught subjects of General Stream to the students. He has also drawn my attention to Regulation 18(1) of the Higher Secondary Certificate Examination Regulations, 1977 which provides that only the high schools which are registered by the Board under sec. 31(1) of the Gujarat Secondary Education Act, 1972 can run Std. XI and Std. XII and only such schools are eligible to send candidates for examination subject to certain conditions specified by the Board. In the instant case, as the school was not given requisite registration by the Board to teach subjects of General Stream, it was not open to the petitioner school to teach subjects of General Stream to the students.

15. This Court had taken the view in Special Civil Application No. 3233 of 2002 and other connected matters that if a student has changed the stream after studying in Std. XI, he cannot be permitted to appear at Std. XII examination in a different stream. The said view has been confirmed by the Division Bench of this court in L.P.A. No. 110 of 2002 and other connected matters. Looking to the law laid down by this court also, it is not possible to permit the students of the petitioner school to appear at Std. XII examination.

16. From the facts stated hereinabove and more particularly in view of the fact that the examination in Meghraj Taluka had been conducted on and from 18.3.2002, this petition cannot be entertained.

In the circumstances, the petition is rejected.

(A.R. Dave, J.)

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